

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

EXXONMOBIL OIL CORPORATION,)
A New York Corporation,)

Plaintiff,)

v.)

Case No. 08 CV 3064

D CONSTRUCTION MANAGEMENT CO.)

INC., an Illinois Corporation, **PT FERRO**)

CONSTRUCTION COMPANY, INC., an Illinois)

Corporation, **TRANSYSTEMS CORPORATION,**)

a Missouri Corporation, and **CONSOER**)

TOWNSEND ENVIRONDYNE ENGINEERS,)

INC., a Delaware Corporation,)

Defendants.)

Judge Norgle
Magistrate Judge Schenkier

**PLAINTIFF'S ANSWER TO AFFIRMATIVE DEFENSES
OF DEFENDANT TRANSYSTEMS CORPORATION**

Now comes the Plaintiff, ExxonMobil Oil Corporation (hereinafter "EMOC"), by and through its attorneys, Brumund, Jacobs, Hammel, Davidson & Andreano LLC, and for its Answer to the Affirmative Defenses to Count V of its Complaint pleaded by Defendant, Transystems Corporation (hereinafter "Transystems"), states as follows:

First Affirmative Defense

Plaintiff's alleged damages, if any were proximately caused by the intervening and superseding acts and/or omissions of others not within the employ or control of this Defendant.

ANSWER: Denies.

Second Affirmative Defense

1. Prior to and at the time of the occurrence alleged in Plaintiff's Complaint, Plaintiff was under a duty to use ordinary and reasonable care for the protection and safety of its property, including its subsurface electrical utility lines.

ANSWER: Admits only to those duties prescribed by the laws of the State of Illinois.

2. During the course of the Arsenal Road project, ExxonMobil representatives communicated with Transystems Corporation extensively regarding the existence and location of utility lines privately owned by and under the exclusive care and control of ExxonMobil.

ANSWER: Denies that said lines were under the exclusive care and control of ExxonMobil during the course of the Arsenal Road project, and admits the remainder of this paragraph.

3. In addition to the extensive communication between Transystems and ExxonMobil, Transystems' design drawings, including, but not limited to, the utility plan, were furnished to ExxonMobil for its review.

ANSWER: Admits.

4. At no time prior to the occurrence alleged in Plaintiff's Complaint did ExxonMobil ever advise Transystems regarding the existence of the electrical lines at issue in this case.

ANSWER: Denies.

5. If Plaintiff sustained damage as alleged in the Complaint, said damages were sustained, in whole or in part, as a direct and proximate result of Plaintiff breach of

duty when Plaintiff remained silent and failed to inform Transystems of the existence of the subsurface utility lines at issue in this case.

ANSWER: Denies.

WHEREFORE, the Plaintiff, ExxonMobil Oil Corporation, by and through its attorneys, Brumund, Jacobs, Hammel, Davidson & Andreano LLC, respectfully requests this Honorable Court to enter judgment in its favor, and against Defendant Transystems Corporation, and for such further relief as it deems just and necessary.

ExxonMobil Oil Corporation

By: /s/ Frank P. Andreano
One of Its Attorneys

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